



13/ Appeal Brief
LC
5-26-01

Our Reference: CBC-122-C

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Richard C. Wilson and Patrick M. Culpepper
Serial Number: 09/391,294
Filing Date: September 7, 1999
Examiner/Art Group Unit: R. Canfield/3635
Title: CORNER POST SUPPORT MEMBER

APPEAL BRIEF

Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

Received
Mar 26 2001
TL 3600 mail room

Please enter the following Appeal Brief in the appeal filed January 19, 2001. This appeal is taken from the final rejection of claims 1-12; and from the Examiner's Advisory Action dated January 2, 2001 rejecting claims 1-5 entered by the Examiner in an Amendment After Final.

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REAL PARTY IN INTEREST

The real party in interest is the company ABCO, Inc. d/b/a Progressive Foam Products, a company in Beach City, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

STATUS OF CLAIMS

Claims 1-5 are pending in the case. Claims 6-12 were cancelled in the Amendment After Final. Claims 13-23 were cancelled in a previous Amendment.

STATUS OF AMENDMENT

An Amendment After Final rejection was submitted. In the Amendment After Final, claims 6-12 were cancelled and claims 1-5 were amended. The claims 1-5 as amended in the Amendment After Final were entered by the Examiner upon the filing of a Notice of Appeal and this Appeal Brief.

SUMMARY OF THE INVENTION

The present invention as described in U.S. Patent No. 5,664,376 and shown in the drawings, especially Figures 1 and 3, provides a support member 10 for location between the inside surface 12 of a conventional siding corner post 14 (col. 2, lines 55-56). The siding corner post 14 includes two siding walls 16 and 18 that converge angularly at the exterior corner of a building 20 leaving a triangular gap between the siding corner post 14 and the exterior wall surface 22 of the building for disposition of the corner support member 10 (col. 2, lines 60-64). The corner support member 10 has two elongated portions 36 and 38 angularly disposed with respect to one another to conform to the shape of the siding corner post 14 (col. 3, lines 13-16). The corner support member 10 has two flanges 44 and 46 extending outwardly from the support member portions 36 and 38 at the base 24 of the siding corner post 14. The flanges 44 and 46 extend longitudinally along the siding corner post 14 and continuously along the entire length of the support member portions 36 and 38 (col. 3, lines 35-41) and Figure 3.

ISSUES ON APPEAL

Issue No. 1: Are claims 1-5 unpatentable under 35 U.S.C. § 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based?

Examiner answers: Yes

Appellant answers: No

Issue No. 2: Are claims 1, 2, and 4-5 unpatentable under 35 U.S.C. § 102(b) over U.S. Patent No. 2,091,316 issued to Hauck?

Examiner answers: Yes

Appellant answers: No

GROUPING OF CLAIMS

Issue No. 1: Claims 1-4 rise and fall together. Claim 5 rises and falls independently of claims 1-4 for the reasons stated in greater detail below.

Issue No. 2: Claims 1, 2, and 4 rise and fall together. Claim 5 rises and falls independently of claims 1, 2, and 4 for the reasons stated in greater detail below.

ARGUMENT

Issue No. 1

Claims 1-5 stand rejected under 35 U.S.C. § 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the patent reissue is based. The Examiner states that the limitations "single member" and/or "wherein said first and second longitudinally extending portions have lengths corresponding to the length of the corner of the building" have been omitted from the claims. The Examiner further states that these limitations were presented in Amendments in Application Serial No. 08/639,698 filed on April 29, 1996 and December 6, 1996 (Appendix A). The Examiner further states that the Appellants' Remarks in these Amendments contains arguments that these limitations make the claims allowable over the prior of record; and thus the

omitted limitations relate to subject matter previously surrendered in Application Serial No. 08/639,698.

The Court in *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997) provided a three step approach for applying the recapture doctrine:

- 1). If the reissue claim is as broad as or broader than the cancelled or amended claim in all aspects, the recapture rule bars the claim.
- 2). If the reissue is narrower in all aspects, the recapture rule does not apply, but other rejections are possible.
- 3). If the reissue claim is broader in some aspects, but narrower in others then:
 - a). if the reissue claim is as broad as or broader in an aspect germane to a prior art rejection but narrower in another aspect completely unrelated to the rejection, the recapture rule bars the claim;
 - b). if the reissue claim is narrower in an aspect germane to prior art rejection, and broader in an aspect unrelated to the rejection, the recapture rule does not bar the claim, but other rejections are possible.

The terminology "single member" or "wherein said first and second longitudinally extending portions have lengths corresponding to the length of the corner of the building" has not been omitted in claim 1 as amended in the Amendment After Final and entered by the Examiner. Dependent claims 2-4 which are dependent upon claim 1, did not have the aforementioned terminology in the original claims.

Claim 1 is an example of the step 2 of the *Clement* test, wherein the reissue claim 1 is narrower in all aspects of the original claim 1. Therefore the recapture rule does not apply.

In the first Office Action for the subject reissue application that was mailed on March 21, 2000, the Examiner rejected claims 1-5 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly

point out and distinctly claim the subject matter which the Appellants regard as the invention. The Examiner stated that the scope of the claims were rendered indefinite by the language "have lengths corresponding to the length of the corner of the building." In response to the rejection of claims 1-5 under 35 U.S.C. § 112, second paragraph, claim 1 was amended so that the phrase "have lengths corresponding to the length of the corner of the building" was amended to "have lengths adapted for corresponding to the length of the corner of the building" in the Amendment dated August 3, 2000. Further, the phrase "a single member" remains in claim 1 as amended and entered by the Examiner just as in the original application (U.S. Patent No. 5,664,376). Therefore, the phrases cited by the Examiner as being omitted in claims 1-4 have not been omitted and instead have been simply amended to overcome a 35 U.S.C. § 112, second paragraph rejection. Amended claims 1-4 are, in fact, narrower in all aspects than the original claims 1-4 respectively and therefore the recapture rule does not apply to those claims. Reversal of the Examiner's rejections of claims 1-4 under 35 U.S.C. § 251 is requested.

With respect to claim 5, claim 5 is an example of step 3(b) of the *Clement* approach for applying the recapture doctrine, in that claim 5 is narrower in aspects germane to prior art rejection and broader in some aspects unrelated to the rejection. Claim 5 does not include the terminology "have lengths corresponding to the length of the corner of the building" but is narrower in some aspects germane to a prior art rejection by reciting "first and second portions defining a cornered inner surface and a cornered outer surface parallel to said cornered inner surface."

The Appellants contend that the terminology "have lengths corresponding to the length of the corner of the building" is not germane to the prior art rejection. Although the aforementioned terminology was added to claim 1 in the original application in the Amendment dated December 2, 1996 (Appendix A), other limitations were added to claim 1 including that the first support member flange extends outwardly "from said first portion a predetermined distance and extending continuously along the entire length of

said first portion" and that the second support member flange extends outwardly "from said second portion a predetermined distance and extending continuously along the entire length of said second portion, wherein said first and second support member flanges extend said inner surface radially outwardly."

In addition, similar terminology i.e. "having a predetermined length generally corresponding to the general length of the building" was also incorporated into a new claim 11 in the same Amendment dated December 2, 1996. As indicated in Appendix B, a telephone interview was conducted between the Examiner of the original application and the Appellants' attorney on February 27, 1997. In the interview it was agreed by the Appellants' attorney to cancel new claims 11 and 12 and to better define the first and second flanges in claim 1. The agreement to cancel new claim 11 indicates an admission by the Appellants' Attorney and the Examiner of the original application (U.S. Patent No. 5,664,376) that the terminology "having lengths corresponding to the length of the building" does not provide patentable material over the prior art. Therefore this terminology is not germane to the prior art rejection.

Further, in the Notice of Allowance of the original application in Part III (Appendix C), the Examiner's Amendment indicated what was considered germane to the prior art rejection when the Examiner provides his statement of reasons for allowance:

"no prior art of record, alone or in combination, teaches or fairly suggests a support member having first and second support member flanges extending outwardly from first and second portions of a single member, respectively, the first and second flanges extend continuously along the entire length of the first and second portions."

The Appellants in claim 5 are not claiming anything broader than what the Examiner of the original application stated was his reasons for allowance. The Appellants are now claiming in new claim 5 what the

Examiner in the original application indicated was allowable; that is, what is germane to the prior art rejection. In fact, claim 5 is almost verbatim to what the Examiner of Application Serial No. 08/639,698 states as allowable. In light of the Examiner's reasons for allowance in Application Serial No. 08/639,698, the limitation of "wherein the first and second longitudinally extending portions have lengths corresponding to the length of the corner of the building" is not germane to prior art rejections. The Court in *In re Clement* states that if the reissue claim is narrower in aspects germane to prior art rejection and broader in aspects unrelated to the rejection, then the recapture rule does not bar the claim, but other rejections are possible. Therefore, the elimination of the phrase "wherein the first and second longitudinally extending portions have lengths corresponding to the length of the corner of the building" broadens the claims in aspects unrelated to the rejection and therefore the recapture rule does not apply or bar claim 5.

The Examiner of the present reissue application states that regardless of the intended meaning of the limitations by the Appellants own admissions in his Remarks in the last response, the limitations "single member" and "length corresponding to the length of the corner of the building" were added during the prosecution to overcome a rejection. Therefore, these limitations must be present in all of the claims of the instant application.

There was no admission in the Amendment of the original application dated December 2, 1996 that original claim 1 was not patentable without the limitation that the first and second longitudinally extending portions have lengths corresponding to the length of the corner of the building, because the Examiner's Interview Summary Record (Appendix B) indicates that the Appellants' attorney recanted the statement that the limitation was required to overcome the prior art by agreeing with the Examiner of the original application to cancel claim 11 which included the same limitation. Further, The Examiner's Interview Summary Record taken together with the Examiner's Amendment which accompanied the Notice of Allowance (Appendix C) indicates that the aforementioned limitation was not

germane and therefore also negates any prior remarks accorded to the limitation in the Amendment dated December 2, 1996.

The Court in *Mentor Corp. v Coloplast, Inc.*, 998 F.2d 992, 27 USPQ2d 1521 at 1525 (Fed. Cir. 1993) states that "Thus the reissue statute cannot be construed in such a way that competitors, properly relying on prosecution history, become patent infringers when they do so." The Appellants contend that any competitor who properly relies on the entire prosecution history of U.S. Patent No. 5,664,376 will know exactly what he must do to avoid infringement based upon the Examiner's statement of reasons for allowance. It would be evident to any competitor that the length of the single support member in relationship to its intended environment is not a patentable aspect of the claim. Therefore, reversal of the Examiner's rejection of claim 5 under 35 U.S.C. § 251 is requested.

Issue No. 2

Claims 1, 2, and 4 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,091,316 to Hauck. The Examiner states that the Hauck reference provides in Figure 2, a member 6 having first and second longitudinally extending portions defining a corner inner surface each having a radially outwardly extending flange 5, and that wood 6 is a material having insulating qualities. However, the Hauck reference does not show a first support flange lying in the first plane and extending outwardly from the first portion. Further, the Hauck reference does not show or disclose a second support member flange lying in the second plane and extending outwardly from the second portion. The Examiner refers to Figure 2 in the Hauck reference and indicates that item 6 is the member and that item 5 is the radially outwardly extending flange. The item 5 does not extend outwardly from either a first or second portion of member 6. Although item 5 does extend beyond portions of member 6, item 5 does not extend **from** portions of member 6. Portions of item 5 are positioned adjacent to member 6 and therefore any flange portion of item 5 extended beyond member 6 actually extends from itself and is merely adjacent to member 6. Further, item 5 and 6 in the Hauck reference are two different materials as defined in

column 2, lines 4-6 and lines 11-13 and cannot be a single member as required in claim 1. The Hauck reference further indicates that the metal corner element 5 provides a clean, even corner over which the corner strip 6 may be placed (col. 2, lines 24-26). This again indicates that the support member in the Hauck reference is not a single member. Since items 5 and 6 in the Hauck reference are different materials this makes it inherently difficult for the metal item 5 to extend from the wood member 6. Claim 1 requires that the support member flange lies in the first plane and extends outwardly from the first portion a predetermined distance and extends continuously along the entire length of the first portion and from a cornered inner surface radially outwardly. Claim 1 requires that the second support member flange lies in the second plane and extends outwardly from the second portion a predetermined distance and extends continuously along the entire length of the second portion and from the cornered inner surface radially outwardly. The Examiner states that the Hauck reference provides a member 6 and radially outwardly extending items 5. Since the item 5 is a distinct and separate piece from member 6, the items formed from 5 do not extend from the cornered inner surface of member 6 radially outwardly. Items 5 and 6 in the Hauck reference do not share the same cornered inner surface. The items 5 in the Hauck reference extend adjacent to the cornered inner surface of member 6, but the items 5 do not extend from the cornered inner surface as recited in claim 1. Reversal of the Examiner's rejection of independent claim 1 and of its dependent claims 2 and 4 is requested.

With respect to claim 5, the Hauck reference does not show or disclose a single support member having first and second portions and first and second support flanges. The Hauck reference does not show or disclose an insulating support made from a single support member. The Hauck reference requires two distinct members made from two separate materials abutted to each other to provide the corner finishing element. Further, the items 5 in the Hauck reference do not extend from the first and second portions of the single support member as recited in claim 5. Reversal of the Examiner's rejections of claim 5 is requested.

OTHER ISSUES NOT ON APPEAL

The Examiner states that the reissue oath/declaration filed with this application is defective for a number of reasons. The Appellants will provide a Supplemental Declaration correcting the listed defects under separate cover. The Supplement Reissue Declaration will be submitted under separate cover before the allowance of the case as permitted by the Examiner in a telephone interview.

The Examiner states that claims 1-5 are rejected under the judicially created doctrine of double patenting over claim 1 of U.S. Patent No. 5,542,222. Once the claims are deemed to be allowable, a timely filed Terminal Disclaimer will be submitted.

The Examiner states that the original patent, or an affidavit or declaration as to loss of inaccessibility of the original patent, must be received before this reissue application can be allowed. The Appellants will submit the original patent under separate cover before the reissue application is allowed.

CONCLUSION

For the reasons stated above, it is respectfully submitted that Appellants' invention as set forth in claims 1-5 do not violate the recapture rule and are distinguished from the prior art. As such, it is respectfully submitted that the Examiner's final rejection of claims 1-5 is erroneously based and its reversal is respectfully requested.

No oral hearing is requested.

Appellants' attorney's check in the amount of \$155.00 is enclosed to cover the Appeal Brief filing fee.

If any charges or fees must be paid in connection with the following communication, they may be paid out of our Deposit Account No. 25-0115.

This Appeal Brief is being filed in triplicate including one

original and two copies.

Respectfully submitted,

YOUNG & BASILE, P.C.

A handwritten signature in cursive script, reading "Darlene P. Condra".

Darlene P. Condra
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Dated: March 19, 2001
DPC/slc

APPENDIX A

Our Reference: CBC-122-B

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICEThis Application:

Applicant: Richard C. Wilson et al.

For: CORNER POST SUPPORT MEMBER

The above-referenced application is a
continuation application of:

Applicant: Richard C. Wilson et al.

U.S. Ser.No.: 08/355,471

Examiner: Nguyen

Filed: December 14, 1994

Art Unit: 3509

For: CORNER POST SUPPORT MEMBER

AMENDMENT

Commissioner of Patents
and Trademarks
Washington, DC 20231

Sir:

The Office Action dated August 30, 1996 has been received and carefully reviewed. Please amend the above-identified patent application as indicated below.

IN THE CLAIMS:

Amend claim 1 as follows:

- 1 1. (Twice Amended) A support member for a corner
- 2 post made of thin sheet material and used to enclose the
- 3 corner of an external wall of a building, the corner post
- 4 being spaced from the external wall to define a longitudinally
- 5 extending hollow space therebetween, said support member
- 6 comprising:
- 7 a single member having first and second
- 8 longitudinally extending portions, the first portion lying in

9 a first plane angularly disposed with respect to the second
10 portion lying in a second plane, wherein said first and
11 second longitudinally extending portions have lengths
12 corresponding to the length of the corner of the building and
13 wherein said single member defines a cornered inner surface
14 for contacting the building and a spaced apart cornered outer
15 surface for contacting the corner post;

16 a first support member flange extending outwardly from
17 said first portion a predetermined distance and extending
18 continuously along the entire length of said first portion [to
19 extend said inner surface radially outwardly]; and

20 a second support member flange extending outwardly from
21 said second portion a predetermined distance and extending
22 continuously along the entire length of said second portion
23 [to], wherein said first and second support member flanges
24 extend said inner surface radially outwardly.

Amend claim 9 as follows:

1 9. (Twice Amended) The support member of claim 1
2 wherein

3 the support member has a length [corresponding to a
4 length of the corner of the building and wherein said support
5 member] and thickness corresponding to and for filling
6 [substantially fills] the hollow space between the corner post
7 and the external wall of the building along the entire length
8 of the corner of the building.

Add claims ¹¹~~10~~ and ¹²~~11~~ as follow:

1 ¹¹~~10~~. (New) A support member for a corner post made
2 of thin sheet material and used to enclose the corner of an
3 external wall of a building, the corner post being space from
4 the external wall to define a longitudinally extending hollow
5 space therebetween, said support member comprising:

6 a single member having an elongated main body having
7 a predetermined length generally corresponding to the general
8 length of the corner of the building;

9 first and second flanges extending from the main
10 body a predetermined distance, said first and second flanges
11 have inner surfaces complimentary to the corner of the
12 external wall of the building and having a length equivalent
13 to the predetermined length of the main body.

1 ¹²~~11~~. (New) The support member of claim 10, wherein
2 said support member has a thickness that substantially fills
3 the hollow space between the corner post and the external wall
4 of the building.

REMARKS

Claims 1 and 9 are amended. Claims ¹¹~~10~~ and ¹²~~11~~ are added. Claims 1, 3-4 and 9-11 remain in the case. Claims 1, 3 and 9 were rejected over the claimed disclosure of U.S. Patent No. 5,542,222 on the basis of judicially-created non-statutory double patenting. A signed terminal disclaimer is submitted to obviate the double patenting rejection over the prior art of U.S. Patent No. 5,542,222.

Claim 9 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner alleges that the scope of claim 9 is unclear because applicants positively recites connection between the support member and its intended environment. Claim 9 is now amended to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. In amending claim 9, particular attention has been taken of the Examiner's comments. Claim 9 is deemed allowable.

Claims 1, 3, 4 and 9 were rejected under U.S.C. §102b as being anticipated by Bear (U.S. Patent 4,949,520). The Examiner alleges that in Figure 7, Bear discloses a support member comprising a single member (63) having first and second longitudinally extending portions, the first portion lying in a first plane angularly disposed with respect to the second portion lying in a second plane; a first support member flange extending outwardly continuously along the first portion; a second support member flange extending outwardly continuously along the second portion; and the support member is fabricated from modeled plastic.

Claim 1 has now been amended to overcome the rejection under 35 U.S.C. §102(b). Claim 1 now requires that the first and second portions have lengths corresponding to the length of the corner of the building. Claim 1 further requires that the first and second support member flanges extend outwardly a predetermined distance and both extend

continuously along the entire length of the first and second portion respectively. Bear does not show or disclose a support member having the aforementioned configuration wherein the flanges extend continuously along the entire length of the portions which also have lengths corresponding to the length of the corner of the building. The support member of the subject invention provides continuous support along the entire corner of the building for the corner post to prevent denting of the exterior corner post of the building and further to prevent a haven for insects and birds. The support member of Bear as shown in Figures 4-7 does not provide continued support along the entire length of a corner. The corner connectors as used in Bear are used for inside soffits as shown in Figure 1 and 2 and therefore are not subject to the impact as that experienced on an outside exterior wall. Further, soffits are for interior structures and are not prone to infestation of insects and other critters. Therefore claim 1 is deemed allowable over the prior art and such action is requested. Inasmuch as claims 3, 4 and 9 are dependent upon claim 1 they are deemed allowable also. Such action is also requested.

Claims ¹¹10 and ¹²11 are added to require that the support member is a single member having an elongated main body with a predetermined length corresponding to the length of the corner of the building. Claims ¹¹10 and ¹²11 further require first and second flanges extending from the main body and predetermined distance and that the flanges have a length equivalent to the length of the main body. Bear does not show

or disclose flanges having lengths equivalent to the length of its main body as seen in Figures 4-7 in Bear. Therefore claims 10 and 11 are deemed allowable.

It is respectfully submitted that this Amendment traverses and overcomes all of the Examiner's objections and rejections to the application as originally filed. It is further submitted that this Amendment has antecedent basis in the application as originally filed, including the specification, claims and drawings, and that this Amendment does not add any new subject matter to the application. Reconsideration of the application as amended is requested. It is respectfully submitted that this Amendment places the application in suitable condition for allowance; notice of which is requested.

If the Examiner feels that prosecution of the present application can be expedited by way of an Examiner's amendment, the Examiner is invited to contact the Applicant's attorney at the telephone number listed below.

Respectfully submitted,

YOUNG & BASILE, P.C.

Andrew R. Basile
Attorney for Applicant(s)
Registration No. 24753
(810) 649-3333

3001 West Big Beaver Rd., Suite 624
Troy, Michigan 48084-3107
Dated: December 2, 1996
ARB/DPC/las

APPENDIX B



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER NUMBER
	7

DATE MAILED:

EXAMINER INTERVIEW SUMMARY RECORD

All participants (applicant, applicant's representative, PTO personnel):

(1) Kim Nguyen (3) _____(2) Andrew R. Basile (4) _____Date of interview 2/27/97Type: ☒ Telephonic ☐ Personal (copy is given to ☐ applicant ☐ applicant's representative).Exhibit shown or demonstration conducted: ☐ Yes ☒ No. If yes, brief description: _____Agreement ☒ was reached with respect to some or all of the claims in question. ☐ was not reached.Claims discussed: 1, 11, and 12Identification of prior art discussed: None

Description of the general nature of what was agreed to if an agreement was reached, or any other comments: an authorization was given to cancel claims 11 and 12, and further amend claim 1 to better define the first and second flanges.

(A fuller description, if necessary, and a copy of the amendments, if available, which the examiner agreed would render the claims allowable must be attached. Also, where no copy of the amendments which would render the claims allowable is available, a summary thereof must be attached.)

Unless the paragraphs below have been checked to indicate to the contrary, A FORMAL WRITTEN RESPONSE TO THE LAST OFFICE ACTION IS NOT WAIVED AND MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW (e.g., items 1-7 on the reverse side of this form). If a response to the last Office action has already been filed, then applicant is given one month from this interview date to provide a statement of the substance of the interview.

→ ☒ It is not necessary for applicant to provide a separate record of the substance of the interview.

☐ Since the examiner's interview summary above (including any attachments) reflects a complete response to each of the objections, rejections and requirements that may be present in the last Office action, and since the claims are now allowable, this completed form is considered to fulfill the response requirements of the last Office action.

Kim Nguyen
Examiner's Signature

APPENDIX C



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: Box ISSUE FEE
ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

NOTICE OF ALLOWANCE AND ISSUE FEE DUE

05M1/0228

ANDREW R BASILE
YOUNG & BASILE
3001 WEST BIG BEAVER ROAD
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FEES
Out: 4/28/97
Due: 5/28/97

APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
08/639,698	04/29/96	004	NGUYEN, K.	3509 02/28/97
First Named Applicant	WILSON, RICHARD C.			

TITLE OF INVENTION: CORNER POST SUPPORT MEMBER

DOCKET # 4412

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPLN. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
3	CBC-122-B	052-287.100	K06 UTILITY	YES	\$645.00	05/28/97

Chg. cl. 3-3-97 + Attny Fee - Crsp

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED.

THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.

HOW TO RESPOND TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.
If the SMALL ENTITY is shown as yes, verify your current SMALL ENTITY status:

- A. If the status is changed, pay twice the amount of the FEE DUE shown and notify the Patent and Trademark Office of the change in status, or
- B. If the status is the same, pay the FEE DUE shown above.

If the SMALL ENTITY is shown as NO:

- A. Pay FEE DUE shown above, or
- B. File verified statement of Small Entity Status before, or with, payment of 1/2 the FEE DUE shown above.

II. Part B of this notice should be completed and returned to the Patent and Trademark Office (PTO) with your ISSUE FEE. Even if the ISSUE FEE has already been paid by charge to deposit account, Part B should be completed and returned. If you are charging the ISSUE FEE to your deposit account, section "6b" of Part B should be completed.

III. All communications regarding this application must give application number and batch number. Please direct all communication prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Patents Issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

2. YOUR COPY

Serial Number: 08/639,698
Art Unit: 3509

-2-

Part III EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Andrew R. Basile on 02/27/97.

2. The application has been amended as follows:

Claim 1, line 19, before "; and" insert --and from said inner surface radially outwardly--;

line 24, after "extend" insert --from--.

Cancel claims 11 and 12.

3. The following is an examiner's statement of reasons for allowance: no prior art of record, alone or in combination, teaches or fairly suggests a support member having first and second support member flanges extending outwardly from first and second portions of a single member, respectively, the first and second flanges extend continuously along the entire length of the first and second portions.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Serial Number: 08/639,698
Art Unit: 3509

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien Nguyen whose telephone number is (703) 308-2493.

ktn
February 27, 1997

KIEN T. NGUYEN
PRIMARY EXAMINER
GROUP 3500

APPENDIX D

CLAIMS ON APPEAL

- 1 1. A support and insulating member for a corner post made
2 of thin sheet material and used to enclose one corner of an external wall of a
3 building, the corner post being spaced from the external wall to define a
4 longitudinally extending hollow space therebetween, said support and
5 insulating member comprising:
6 a single member having first and second longitudinally
7 extending portions, the first portion lying in a first plane angularly disposed
8 with respect to the second portion lying in a second plane, wherein said first
9 and second longitudinally extending portions have lengths adapted for
10 corresponding to the length of the corner of the building and wherein said
11 single member defines a cornered inner surface adapted for contacting the
12 building and a spaced apart cornered outer surface parallel to said cornered
13 inner surface adapted for contacting the corner post;
14 a first support member flange lying in the first plane and
15 extending outwardly from said first portion a predetermined distance and
16 extending continuously along the entire length of said first portion and from
17 said cornered inner surface radially outwardly; and
18 a second support member flange lying in the second plane and
19 extending outwardly from said second portion a predetermined distance and
20 extending continuously along the entire length of said second portion[,
21 wherein said first and second support member flanges extend] and from said
22 cornered inner surface radially outwardly.
- 1 2. The support and insulating member of claim 1 wherein said:
2 support and insulating member is fabricated from a material
3 having insulating qualities.

1 3. The support and insulating member of claim 2 wherein
2 said material is selected from the group consisting of expanded, extruded or
3 molded polystyrene foam plastic.

1 4. The support and insulating member of claim 1 wherein
2 the support and insulating member has a length and thickness adapted for
3 corresponding to and for filling the hollow space between the corner post and
4 the external wall of the building along the entire length of the corner of the
5 building.

1 5. An insulating support comprising:
2 a single support member having first and second portions
3 angularly disposed from each other, said first and second portions defining a
4 cornered inner surface and a cornered outer surface parallel to said cornered
5 inner surface, said single support member having first and second support
6 flanges extending outwardly from the first and second portions of the single
7 support member respectively, said first and second flanges extending
8 continuously along the entire length of the first and second portions.